IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 14612 of 2004(M)

OS.2058/2000 of I ADDL.M.C.,TRIVANDRUM
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PETITIONER:

MR.SIVARAMAN NAIR, AGED 47 YEARS,
S/O. MADHAVAN NAIR, PUNNERTHALA VEEDU,THUNDATHIL,
AYIROOPPARA VILLAGE, THUNDATHIL P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.ANIL

RESPONDENTS:
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1. SMT.S.RENUKA,
PLAVILA PUTHEN VEEDU, THUNDATHIL, AYIROOPPARA
VILLAGE, THUNDATHIL P.O., THIRUVANANTHAPURAM.

2. AISHA MOL,
PLAVILA PUTHEN VEEDU, THUNDATHIL, AYIROOPPARA
VILLAGE, THUNDATHIL P.O., THIRUVANANTHAPURAM.

3. ASHA DEVI,
PLAVILA PUTHEN VEEDU, THUNDATHIL, AYIROOPPARA
VILLAGE, THUNDATHIL P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.AHAMMED
SRI.M.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 14612 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF PROMISSORY NOTE EXECUTED IN FAVOUR OF THE PETITIONER BY ASOKAN DT. NIL.

EXT.P2 : TRUE COPY OF THE ORDER DT.18.06.03 PASSED BY THE 1ST ADDL. MUNSIFF'S COURT, THIRUVANANTHAPURAM.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 14612 OF 2004

Dated this the 8th day of June, 2007

JUDGMENT

Ext.P2 order by which the learned Munsiff refused to mark Ext.P1 document which was put in evidence by the plaintiff on the reason that Ext.P1 is not a promissory note but is a bond, is under challenge in this proceedings under Article 227 initiated by the plaintiffs. The suit was instituted producing the original of Ext.P1, describing the same as a promissory note. The learned Munsiff on a scrutiny of the document found that the document is not a promissory note. After finding that the document is a not a promissory notice, the learned Munsiff went on to find that the document being an instrument whereby an obligation to pay money is created is a bond as defined under Section 2(a) ii of the Kerala Stamp Act.

2. The above view of the learned Munsiff in my opinion is wrong. Section 2(a) of the Act defines a bond and the same reads as follows:

> (i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
>
> (ii) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

3. Obviously Ext.P1 is not attested by any witness, though it is an instrument by which the executant has obliged himself to pay money to the beneficiary. Therefore being an unattested instrument Ext.P1 will never come within Clause ii of Section 2(a) of the Kerala Stamp Act. Mr. P.A. Ahammed, Learned counsel for the respondent would submit that Ext.P1 will come within the definition given under Section 2(a) (1). According to him the 2nd promise recorded in Ext.P1 is that on failure of the agreement to pay a sum of Rs.30,000/- the amount can be recovered from the movable and immovable properties of the executant can be construed as “the specified act” for the purpose of Section 2 A (1). I cannot agree. The 2nd limb only records the consequential agreement consequential to the main agreement that money will be paid. The obligation to pay money which is seen recorded in Ext.P1 is not at all a conditional one as required under Section 2 a (1). This being so Ext.P1 can never be a bond under Section 2 a (1). Ext.P1 certainly has trappings of a bond, an agreement and even a promissory note. I have already endorsed the view of the court below that Ext.P1 is not a promissory note.

4. Having regard to the principles laid down in **Mathai Mathew v.**

Thampi [1989 (1) KLT 138], Ext.P1 can be permitted to be marked in an appropriate case as an agreement. But as rightly submitted by the learned counsel for the respondent, the cause of action on the basis of which the suit is instituted is an execution of a promissory note and so long as the plaint remains as what it is. It will be difficult for the petitioner to rely on Ext.P1 as an agreement, for getting a positive decree in the suit. Whatever that be, I set aside Ext.P2 and hold that Ext.P1 is neither a bond nor a promissory note but is to be construed by the learned Munsiff as an agreement.

The Writ Petition is allowed to the above extent. No costs.

PIUS C. KURIAKOSE, JUDGE

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